IN THE HIGH COURT OF JUDICATAURE FOR RAJASTHAN AT JODHPUR.

ORDER.

(1) S.B. Civil Writ Petition No.2208/2005

Hotel Residency Palace vs. The State of Raj. & ors.

(2) S.B. Civil Writ Petition No.2211/2005

Hotel Rajputana Palace vs. The State of Raj. & ors.

Under Article 226 of the Constitution of India.

Date of Order: May 12, 2005.

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. Sunil Joshi for the petitioner.
Mr. M.R. Singhvi for the respondents.

REPORTABLE

BY THE COURT:

Both the petitioners in these writ petitions are engaged in hotel business and obtained licence for retail sale of foreign liquor as required under the provisions of the Rajasthan Excise Act, 1950 (for short "the Act of 1950") and the Rules framed thereunder, namely, The Rajasthan Excise Rules, 1956 (for short "the Rules of 1956") read with Rajasthan Excise (Grant of Hotel Bar/Club Bar Licences) Rules,1973 (for short

"the Rules of 1973"). The term of the licence was to expire on 31.3.2005. According to the petitioner, as per the condition of licence, the petitioner was eligible to obtain renewal of the licence on payment of renewal fee as per rule 3(3) of the Rules of 1973 amounting to Rs.1.50 lacs with fee as per rule 69(1) of the Rules of 1956 which is Rs.25,000/-. The petitioner, for that purpose, also received a letter from the District Excise Officer wherein it was mentioned that initial fee of Rs.1,50 lacs as well as minimum rent fee of Rs.25,000/- is required to be deposited by the petitioners latest by 28.2.2005. On depositing the said amount, according to the petitioner, he became entitled to get the renewal of the licence for the financial year 2005-06. The petitioner deposited the above mentioned amount within time, i.e. by 28.2.2005. According to the petitioners, since the petitioner deposited the entire amount of the licence fee on 28.2.2005, therefore, he is entitled to have renewal of his licence on the same terms and conditions as were prevailing on 28.2.2005 and in accordance with the terms contained in the original licence granted to the petitioner. Despite this, the respondents on the strength of amendment in the Rules of 1956, which came into force with effect from 1.4.2005, is demanding the licence fee Rs.1.50 lacs more on the ground that by amending the rules, the licence fee has been increased from Rs. 1.50 lacks to Rs. 3.00 lacs and, therefore, the petitioner though deposited the entire amount of renewal fees equal to

100% of the licence fees but prior to 1.4.2005 and was holding the licence, still he is required to pay the licence fee according to the amended rules.

According to the petitioner, the controversy stands fully covered by the Division Bench decision of this Court delivered in the case of State of Raj. & ors. vs. Ms. Hotel Hillock Pvt., Sirohi (2002(2) RLR 197). The Division Bench in detail examined the effect of the condition requiring depositing of the licence fee and held that the minimum licence fee under Rule 69(1) of the Rules of 1956 as well as initial fee under the Rules of 1973 is payable at the time of making of the application inasmuch as application itself is required to be filed along with the proof of payment of such demand and since initial fee of renewal is to be equal to the amount which is payable for grant of licence under rule 3(3) of the Rules of 1973, no amount remains due and outstanding thereafter, therefore, the quantum of liability to be discharged at the time of making of renewal application is determined when renewal application becomes due to be presented and so presented. According to the learned counsel for the petitioner, the Division Bench very specifically observed that one cannot look in future what shall be liability for application for securing renewal of existing licence and to await for it. Therefore, unless the rule is amended

retrospectively giving effect to the amount payable as consideration for parting with the exclusive privilege by the State with effect from the date prior to the date when such liability becomes due to be discharged, no additional liability can be raised and demanded in respect of an obligation which has already been due and discharged by the licensee under the existing rules. According to the learned counsel for the petitioner, rest of the reasons given in the above said judgment, unequivocally says that all liabilities for renewal stand discharged on the date when licensee is required to pay the entire licence fee and in this case, the petitioner admittedly has paid the entire licence fee and other amount as required by law, before 1.4.2005, therefore, the State is under obligation to renew the licence of the petitioner on the basis of the payment which the State received and after payment, no liability of the petitioner remained to be discharged.

According to the learned counsel for the petitioner, in view of the specific sub-rule (8) of rule 3 of the Rajasthan Excise (Grant of Hotel Bar/Club Bar Licences) Rules,1973 (for short “the Rules of 1973”), the application for renewal of licence can be rejected only on the grounds mentioned in various clauses of sub-rule (8) of rule 3 of the Rules of 1973. When the petitioner submitted application and deposited all the amounts due then the petitioner's application can be rejected only

under sub-rule (8). Admittedly, no ground exists for rejection of the petitioner's application for renewal of the licence as provided under sub-rule (8) of rule 3 of the Rules of 1973, therefore, the respondents are under obligation to renew the licence of the petitioner and have no right to demand the amount according to amended rules.

The learned counsel for the petitioner also relied upon the judgments of the Apex Court delivered in the cases of Commissioner of Income Tax, Bhopal vs. Hindustan Elector Graphites Ltd., Indore ((2000) 3 SCC 595) and K.M. Sharma vs. Income Tax Officer, Ward 13(7), New Delhi ((2002) 4 SCC 339).

According to the learned counsel for the respondent, the petitioner virtually seeking renewal of licence on the terms and conditions which are no more in existence and seeking execution of the document in accordance with the repealed provisions of law which is apparent from the facts of this case. According to the learned counsel for the respondents, if the petitioner had an intention to get the renewal of licence then he was required to submit the application within time along with the requisite fee so as to make the application eligible for consideration for renewal of licence. The submitting of application and payment of requisite amount along with the application,

makes the application a valid application for consideration for renewal of licence and that application cannot be rejected on the ground of creation of additional liability subsequently after the cut-out date for submitting the application, may be true, in the facts of a particular case but the document under the statutory provisions of law, can be executed according to the law in force on the date when the document is to be executed.

The learned counsel for the respondents also submitted that in fact the decision of the Division Bench of this Court relied upon by the petitioner delivered in the case of M/s Hotel Hillock Pvt. (supra) favours the respondents and not the petitioners. The learned counsel for the respondents vehemently submitted that Hon'ble the Apex Court in the case of Mehboob Dawood Shaikh vs. State of Maharashtra ((2004) 2 SCC 362) held that a judgment should be understood in the light of facts of that case and no more should be read into it than what it actually says. Hon'ble the Supreme Court also cautioned that it is neither desirable nor permissible to pick out a word or a sentence from the judgment of the Supreme Court divorced from the context of the question under consideration and treat it to be complete law decided by the Supreme Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which

were before the Supreme Court. The same view was taken in the case of Union of India vs. Amrit Lal Manchanda and another ((2004) 3 SCC 75) wherein Hon'ble the Supreme Court held that one additional or different fact may make a world of difference and, therefore, the observations of the court must be read in the context in which they appear and this is a well recognised law of precedent and, therefore, the Division Bench judgment of this Court delivered in the case of M/s Hotel Hillock Pvt. (supra), which has been delivered laying down that once a licence has been granted in accordance with the rules in force, subsequent amendment in the Act or the Rules, if are not made applicable retrospectively, they cannot be made applicable on the licence which has already been granted and on these facts the controversy was decided by the above judgment which was relating to the effect of amendment in the rules with effect from 9.7.1998 over a licence which was granted from 1.4.1997, therefore, that was a case where the terms and conditions of already granted licence sought to be changed on the ground of amendment of the rules which were not made effective retrospectively, whereas here in this case, the respondents only demanding the additional amount as per the rules which are in force from the date when the licence is to be executed in favour of the petitioner and hence there is no question of retrospective operation of the rules or change in the terms and conditions of any executed licence.

I considered the submissions and the judgments relied upon by both the learned counsels. The facts which are in brief, may again be recapitulated here. The petitioners are licensees as they have been granted licences for the sale of foreign liquor at their hotels under the provisions of the Rajasthan Excise Act and the Rules framed thereunder. The term of licence was upto 31.3.2005. The petitioners submitted the application for renewal and deposited the renewal fees within the period, i.e. 28.2.2005. Rule 3(3) of the Rules of 1973 has been amended with effect from 1.4.2005. The respondents are demanding increased licence fee for granting licence for the period starting from 1.4.2005 whereas the petitioner claims that the petitioners' liability since stand determined and stand discharged before the amendment came into force, therefore, the respondents cannot demand licence fees from the petitioners as per the amended rules.

The relevant rules may be taken note of. As per rule 72-A of the Rules of 1956, the application for licence as well as for renewal are required to be submitted under the said rules. The same provision provides for application for new licence as well as for renewal of licence. For renewal of existing licence, the licensee is required to submit application for renewal of licence at least one month before

commencement of the year for which licence is required. Rule 72-A further provides that the application shall be accompanied by a treasury receipt showing payment of license fee. Rule 72-A further provides where application for renewal is not made within the prescribed period, it shall be accompanied by additional fee, equivalent to 25% of such fee or five rupees which ever is higher.

Apart from above Rules of 1956, there is another set of rules in the Rules of 1973 which are specific rules for the purpose of granting such licences for Hotel and Club Bar. Since the petitioners are licensees for the liquor for their hotels, therefore, they are governed by the Rules of 1973. Sub-rule (3) of rule 3 of the Rules of 1993 is as under:-

> "Rule 3(3)- Every application for Hotel Bar/club Bar Licence shall be properly signed and shall be accompanied by the following amount of initial fee which shall be in addition to the usual annual fee payable under rule 69(1) of the Rajasthan Excise Rules 1956:
>
> Where application is for a Hotel Bar/club Bar Licence in the town with the population indicated below, the initial fee shall be as under:

S.No.	Category(Population of Cities on the Basis of 1991 Census	Initial fee for licence for their year of part thereof	
		For Liquor Being allowed to be Consumed	For Liquor Being Allowed to be consumed in

		in Bar Room only (Rs.in lacs)	in whole of of Lisence premises (Rs.in lacks)
1.	2.	3.	4.
A. Luxury Hotel/Train			
	1. Five Star Hotels		
	(a)Liquor & Normal Beer		7.50
	(b)Drought Beer	-	1.00
	2. Three & Four Star	-	5.50
B. Heritage Hotel			
	1. Category A	-	7.50
	2. Category B	-	4.00
	3. Category C	1.50	2.50
C. Other Hotels:			
	1. Hotels situated in & within 10 kms. of the Municipal limits of cities with population of ore than one lack Jaisalmer & Mount Abu	1.50	3.00
	2. Situated in other cities	0.75	1.50
D. Club Bar			
	1. Club Bar	0.50	1.50

”

The rule 3 has been amended and the licence fees for the hotel bar/club bar have been increased and in the case of the petitioners, it has been increased from Rs.1.50 lacks to Rs. 3.00 lacks. This is effective from 1.4.2005.

As per sub-rule (5) of rule 3 of the Rules of 1973, each application is required to be scrutinized by the District Excise Officer and it is to be forwarded to the Excise Commissioner with the recommendation of the

District Excise Officer. The Excise Commissioner, after receiving the application with the recommendation of the District Excise Officer, is required to consider each application in the light of recommendation of the District Excise Officer and as per sub-rule (6) of rule 3, the Excise Commissioner can take into account any other relevant factor which may come to his notice and thereafter, he has to pass an order in writing either sanctioning or rejecting the application for licence.

Sub-rule (8) of rule 3 provides the grounds on which the application can be rejected. Sub-rule (10) of rule 3 provides that as soon as the applicant receives the sanction of licence to him, he shall within 15 days, deposit into the treasury the minimum fee prescribed under rule 69(1) of the Rajasthan Excise Rules, 1956.

After all above, the District Excise Officer is required to see that minimum fee has been deposited into the treasury and he shall inspect the location of the premises where the foreign liquor shall be stored and the counters where it shall be sold. He may submit his report to the Excise Commissioner who will issue the licence accordingly under his signature and seal of his office in Form 'C', 'D' or 'E', as the case may be.

Rule 7-A of the Rules of 1973 is also relevant as sub-rule (1) of

rule 7-A provides that licence granted under the principal rule shall expire on the 31st day of March every year. Sub-rule (2) of rule 7-A provides that person possessing a licence under these rules and seeking renewal of the licence, shall apply in accordance with the rule 72-A of the Rajasthan Excise Rules, 1956 and it further provides that such application shall be accompanied by treasury receipt showing the payment of (i) renewal fee equivalent to the initial fee prescribed in Rule 3(3) and (ii) the usual licence fee payable under Rule 69(1) of the Rajasthan Excise Rules, 1956.

The above rules make it clear that all licences granted under the Rules of 1973 shall expire on 31st day of March every year irrespective of the fact that one has applied for renewal of licence as permissible under rule 72-A of the Rules of 19565 and under sub-rule (2) of rule 7-A of the Rules of 1973.The licence is required and can be granted for the period from the day next to the 31st day of March of the last year in case the renewal is sought. It appears from the Rules of 1973 that rule 7-A has not been framed to provide that the existing licence holder, if will apply in time and before the expiry of the period of licence, then the term of licence shall not expire on 31st day of March of every year, rather the sub-rule (1) of rule 7-A specifically provides the expiry of licence on 31st day of March every year, despite having a provision under sub-rule (2) of

rule 7-A of the Rules of 1973 and rule 72A of the Rules of 1956 that the person possessing licence under the Rules of 1973 shall have to apply for renewal of licence a month before the end of the year and further he is required to deposit the renewal fee equivalent to initial fee prescribed under rule 3(3) and usual licence fee payable under rule 69(1) of the Rules of 1956. That makes the intention of legislation very clear that once licence will have to expire on 31st day of March every year. The necessary implication is that a new licence is required to be granted though on application for renewal of licence and which can be granted from the day and time after the expiry of the earlier licence and that means from the 1st day of April of every year.

The Rules of 1973 have been framed for specific purpose to regulate the sale of liquor in hotels, hotel bar and club bar. In the Rules of 1973, there appears to be no separate procedure for scrutiny of application for grant of licence but at the same time neither the rule 7-A of the Rules of 1973 nor rule 72-A of the Rules of 1956 provides that the licences already granted and which are to expire on 31st day of March, shall stand renewed automatically or with effect from 31st March or with same terms and conditions which were in existence on 31st March of the year, on depositing the renewal fee and usual licence fee payable under rule 3(3) of the Rules of 1973 and the Rules of 1956 respectively.

Therefore, also it cannot be presumed that mere by submitting the application for renewal of existing licence accompanied with the requisite fee and usual licence, one will have right to claim renewal of licence on same terms and conditions on which the earlier licence was granted. If any other interpretation is given, then sub-rule (1) of rule 7-A of the Rules of 1973 will become negatory and it will against the legislative intent which is made clear specifically by incorporation sub-rule (1) in rule 7-A requiring expiry of the existing licence on 31st day of March every year.

The question may arise, what can be difference between the application for grant of fresh licence and application for renewal of licence. The said point is though not directly involved in this petition but incidentally since this question crops up, therefore, while examining the controversy as involved in these writ petitions, it will be necessary to examine this aspect also. Admittedly, the licence, if a private licence, contains all the terms and conditions of the licence which may also contain term on which licence can be renewed and it may also contain a term that licence shall be renewed in the existing terms or may contain a term providing for increase in the licence fee etc., in that situation, both the contracting parties are governed by the terms of the licence. In the licence granted under the statutory provisions, the law

governing the licence in the present case is under the Rules of 1973, if any additional benefit has not been given to the previous licence holder on renewal of their licence, then no more benefit can be claimed by the licensees than given to them under the Act and the Rules.

The sub-rule (11) of rule 3 of the Rules of 1973 provides for issuing licence for sale of the foreign liquor and for hotels,licence is required to be issued as provided in Form 'C' which is appended to the Rules of 1973. The petitioner has placed on record the copy of the licence (Annx.-1) which also contains the expiry date of the licence as 31.3.2005. Neither in any of the provisions of the Rules of 1973 or Rules of 1956, nor in the condition of licence (Annx-1), the petitioner acquired right to get the renewal of licence (which in fact is grant of new licence) on the terms which were existing on 31.3.2005. Therefore, the petitioner under the rules or under the statutory contract, has no right to seek directions against the respondents to issue and execute a licence on the same terms and conditions of licence which he was possessing up-till 31.3.2005.

The next question arises is whether the petitioner since has paid the requisite amount under rule 3(3) of the Rules of 1973 and licence fee as per rule 69(1) of the Rules of 1956 has discharged and paid all his

liabilities for the licence for a period from 1.4.2005 and, therefore, he is entitled to have the licence in his favour on the same terms and conditions which were in existence when he submitted the renewal application and paid the above said amounts. The learned counsel for the petitioner vehemently submitted that in view of the decision given in the case of M/s Hotel Hillock Pvt. (supra), the petitioner is entitled for renewal of licence on the terms which were in existence when the petitioner submitted the application form and paid the entire amount required under the Rules.

So far as the facts of the case of M/s Hotel Hillock Pvt.(supra) are concerned, they are admittedly entirely different. In that case, licence to the petitioner was granted for the financial year 1996-97 with expiry date 31.3.1997. The petitioner submitted applications for renewal for the year 1997 and 1998 and, therefore, the petitioner's licence which was granted on 1.4.1998, was upto the period of 31.3.1999. The relevant rule 3(3) of the Rules of 1973 was amended to revise the amount upwardly vide notification issued and published on 9.7.1998. On the strength of this amendment dated 9.7.1998, additional demand has been raised against the petitioner which was challenged by the petitioner by filing the writ petition. The learned Single Judge as well as the Division Bench of this Court held that there is no indication in the notification

that amendment in the rules were operated retrospectively and after noticing above facts, the learned Single Judge as well as the Division Bench of this Court held that the rules cannot be enforced retrospectively creating liability upon the **persons holding the licence which were validly issued** under the provisions of the rules for grant of licence. In fact that was the point in controversy in the case of M/s Hotel Hillock Pvt. (supra). However, the Division Bench of this Court examined the effect of payment of initial licence fee as provided under rule 3(3) of the Rules of 1973 and fee payable under rule 69(1) of the Rules of 1956. The Division Bench in the facts of above case, held that as per the scheme of rule 7-A of the Rules of 1973 along with Rules of 1956, minimum fee under rule 69(1) of the Rules of 1956 as well as initial fee under the Rules of 1973 is payable at the time of making of the application inasmuch as the application itself is required to be filed along with proof of payment of said demand. Therefore, **the amount referred above does not remain due and outstanding on the grant of licence** at the commencement of year for which licence has been granted. Therefore, the quantum of liability to be discharged at the time of making of renewal application, is determined when renewal application becomes due to be presented and so presented. The Division Bench thereafter held as under:-

> "Therefore, unless the rule is amended retrospectively giving effect to the amount payable as consideration for parting with the exclusive privilege by the State with effect from the date prior to the date when such liability becomes due to be discharged, no additional liability can be raised and demanded in respect of an obligation which has already been due and discharged by the licensee under the existing rules.

Since in that case, event completed on submitting the application for renewal of the licence accompanied with the proof for payment of the new fees and ultimately by the contract of licence which was granted to the applicant-petitioner before amendment in rule came. The petitioner in this case, since applied for renewal of the licence, therefore, he discharged his liability by submitting the application in time and by paying the requisite fees as per the rules which were in force and that made the application of renewal of the licence a valid application for consideration for grant of licence under the Rules of 1973. The petitioner's application is not liable to be rejected under sub-clause (a) of sub-rule (8) of rule 3 of the Rules of 1973 as incomplete for want of payment as per the amended rule 3(3) of the Rules of 1973, increasing the initial liability of payment of fees because the petitioner paid the amount as per the law in force but the above payment, as per the rules prevailing on the date when the petitioner submitted his application, only make the petitioner's application eligible for consideration and not more than that. The Excise Commissioner can issue licence only when he receives said application

and could not have granted licence for the period commencing from the 1st April and on the date when he is to grant and sign licence. He can do so only in accordance with the Rules which are in force and he cannot sign and issue licence as per Rules which have not been saved by amending Act. The Excise Commissioner cannot be directed to issue and sign a licence containing a certificate of due discharge of liability despite the fact that on the day when licence is to be executed, full amount has not been paid. In the situation, if the applicant fails to pay the amount as required by the law in force at the time of execution of the licence, his application for grant of licence can be rejected but that rejection due to change in law and is not due to the fault of the applicant and, therefore, as per rule 6 of the Rules of 1973, the applicant shall be entitled to refund of initial fee paid by him.

It will be worthwhile to mention here that in sub-rule (2) of Rule 7-A of the Rules of 1973, the words have been used “renewal fee” for the amount which is required to be paid under rule 3(3) of the Rules of 1973. Renewal fee has been quantified to be equivalent to the initial fee prescribed in rule 3(3) of the Rules of 1973. The words as mentioned in rule 72-A of the Rules of 1956, i.e. “licence fee” have not been used in sub-rule (2) of rule 7-A of the Rules of 1973.Therefore also the amount paid along with the application for renewal of licence, though

may be equivalent to the initial fee prescribed in rule 3(3) of the Rules of 1973 but is a renewal fee only and not a payment of the fee under rule 3(3), though the amount of renewal fee is necessarily equivalent to the fee prescribed under rule 3(3). The said amount though is accepted as due payment under rule 3(3) for the licence but only when the licence is granted and before that it remains renewal fee so as to make the application for renewal of licence, a valid application. Therefore, the contention of the petitioner that he discharged all his liabilities for a licence to be granted in future, cannot be accepted, though he paid the amount equal to the licence fee but as a fee for renewal of licence only. The licence fee as provided under the rules applicable on the date of submitting the application, cannot be stretched to over-ride the rules framed for the grant of licence for a future date, on which the repealed and deleted rules have not been saved. At the cost of repetition, it may again be observed that in the case of M/s Hotel Hillock Pvt. (supra), the entire event completed before the amendment came into force which includes not only presentation of application along with proof of payment of requisite fees but execution of licence in favour of the petitioner and that is not the case here as neither the licence could have been executed nor has been executed during the continuation of the old rules.

The judgment relied upon by the learned counsel for the petitioner delivered in the case of K.M. Sharma (supra) was a case in the matter of Income Tax Act. The above case has no relevance at all. In above case, the Income Tax Department served a notice for reassessment upon the petitioner, which was challenged by the petitioner on the ground that the proposed reassessment for those years have already become barred by time under Section 149 of the Income Tax Act. The High Court was of the opinion that bar of limitation prescribed under Section 149 stood removed by Section 150(1) as amended with effect from 1.4.1989. Hon'ble the Apex Court in above facts held that the proceedings which have attained finality under existing law due to bar of limitation cannot be held to be open for revival unless the amended provision is clearly given retrospective operation so as to allow upsetting of proceedings, which had already been concluded and attained finality. Hon'ble the Apex Court further held that even a procedural provision cannot in the absence of clear contrary intendment expressed therein be given greater retrospectively than is expressly mentioned so as to enable the authorities to affect finality of tax assessments or to open up liabilities, which have become barred by lapse of time. The Hon'ble Apex Court thereafter held that the amendment to Section 150(1) is not expressed to be retrospective and, therefore, has to be held as prospective. Contrary to above, here in this

case, what has been done by the petitioner is that he has applied with all requirements for renewal of his licence but neither the law permits nor the respondents have entered into the concluded contract nor could have entered into the concluded contract in violation to the rules which are in force and were in force on the date on which the respondents could have issued a licence. The respondents have not passed any order of issuance of licence even much less to giving it to the petitioner. The respondents have not lost their right to reject renewal of licence even for no fault of the applicant-petitioner so far as his claim for consideration of his application is concerned, which may entitle the petitioner to take back the licence fee, which he deposited. The Hon'ble Apex Court in the case of K.M. Sharma (supra) held that upsetting of proceeding, which had already been concluded and attained finality, is not permissible unless the amendment in the provisions has been made effective retrospectively. Such is not the case here.

Another judgment relied upon by the learned counsel for the petitioner is reported in the case of Hindustan Elector Graphites Ltd. (supra) wherein Hon'ble the Apex Court, while considering Section 143 (1-A) of the Income Tax Act, held that law relevant for determining the validity of such levy is that in force on the date of filing of the income tax return and not that in force on the date of assessment. According to

the learned counsel for the petitioner, therefore, the relevant date is date of submitting of the application by the petitioner and not the date when the order is to be passed by the authorities for renewal of the licence. The Hon'ble Apex Court approved the view taken by the Calcutta High Court in the case of Modern Fibotex India Ltd. vs. CIT ((1995) 212 ITR 496(Cal.)) and the facts of the case of Modern Fibotex India Ltd. were that the assessee Company received cash compensatory support from the Central Government amounting to about Rs.8.00 lakhs. In its return of income the Company claimed the amount received by it on account of cash compensatory support as not taxable. The Assessing Officer assessed the Company applying the amended provisions of Section 28 of the Act, thus levying additional tax under Section 143(1-A) and Section 4. The High Court held as under:-

> "An assessee cannot be imputed with clairvoyance. When the return was filed, the assessee could not possibly have known that the decision on the basis of which cash compensatory support had been claimed as not amounting to the assessee's income ceased to be operative by reason of retrospective legislation."

In the above facts, the High Court held that the Assessing Officer must determine the questions of assessment thereunder by applying the law prevailing when the return was filed and further held that one has to see the nature of the obligation to which an assessee is subjected in filing his return and the object sought to be achieved by the

introduction of Section 143(1-A) and Section 143(1)(a) which direct levy of additional tax. The Calcutta High Court therefore, observed that :-

> "To hold otherwise, manifestly shocks one's sense of justice that an act, correct at the time of doing it, should become incorrect by some new enactment (see Midland Rly. Co. v. Pye, ER at p. 424). The injustice in my view is more shocking in this case having regard to the fact that the assessee had itself, in its return, drawn the attention of the Income Tax Authorities to the basis upon which the cash compensatory support had not been included as income and had clearly offered to include the same in any assessment if the basis is shown to exist."

The view of the Calcutta High Court also covered the issue involved in the appeal which was before Hon'ble the Apex Court as held by the Hon'ble Supreme Court in the above case of Hindustan Elector Graphites Ltd.(supra) The petitioner's case cannot be equated with the case which was before the Calcutta High Court and before the Hon'ble Supreme Court. The petitioner only had an opportunity to submit an application for renewal of his licence and he got the right to get his application considered on fulfillment of all the conditions in accordance with the rules as were in force when he submitted the application and deposited the initial fee for renewal of the licence. Therefore, at the most, on the basis of his such act, the petitioner can say that his application cannot be rejected by saying that the petitioner failed to deposit the amount as per the amended rules which he could not have deposited as he could not have foreseen what shall be his liability in

future to make his renewal application as valid application. If the respondents, instead of demanding the deficit amount from the petitioner, would have rejected the petitioner's application, that would have been a case of “shocks one's sense of justice” on the ground that an act correct at the time of doing it, has become incorrect by some new enactment. Such is not the position in the present case. Therefore, the judgment delivered in the case of Hindustan Elector Graphites Ltd. (supra) also is of no help to the petitioner.

In view of the above discussion, the writ petitions of the petitioners deserve to be dismissed and hence dismissed.

(PRAKASH TATIA),J.

mlt.